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7 *James Dzurenda*

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 PEDRO RODRIGUEZ,  
11 Plaintiff,  
12 vs.  
13 JAMES DZURENDA,  
14 Defendant.

Case No. 3:17-cv-00205-MMD-CLB

**MOTION TO EXTEND THE DEADLINE  
TO FILE MOTIONS FOR  
SUMMARY JUDGMENT  
(Second Request)**

15 Defendant, James Dzurenda, by and through counsel, Aaron D. Ford, Attorney  
16 General of the State of Nevada, and Harry B. Ward, Deputy Attorney General, hereby  
17 move to extend the deadline to file dispositive motions in this matter by forty-five (45)  
18 days.

19 **MEMORANDUM OF PONTS AND AUTHORITIES**

20 **I. INTRODUCTION**

21 Plaintiff Pedro Rodriguez #59114 (Rodriguez), is a prisoner in the lawful custody of the  
22 Nevada Department of Corrections (NDOC). (ECF No. 7 at 1). Rodriguez is proceeding *pro*  
23 *se* in this 42 U.S.C. § 1983 action asserting an First Amendment free exercise claim; an  
24 equal protection claim; and a Religious Land Use and Institutionalized Persons Act  
25 (RLUIPA) claim against Defendant, former NDOC Director James Dzurenda (Dzurenda).  
26 (*See generally*, ECF No. 7). Rodriguez asserts that the NDOC does not recognize Satanism  
27 as a legitimate faith group. (*Id.*). Rodriguez seeks declaratory, injunctive, and monetary  
28 relief. (*Id.* at 14).

1 Dzurenda filed a motion for summary judgment (ECF No. 37); Rodriguez opposed the  
2 motion (ECF No. 50); and Dzurenda replied. (ECF No. 54).

3 United States Magistrate Judge Carla B. Carry reviewed the record and motions and  
4 submitted a Report and Recommendation that Dzurenda's motion for summary judgment  
5 be granted. (ECF No. 37).

6 United States District Judge Miranda M. Du declined to adopt the Report and  
7 Recommendation and ordered Defendant's motion for summary judgment be denied.  
8 (ECF No. 64 at 13:1-4). The Court rejected Defendant's arguments that he is entitled to  
9 summary judgment based on: the statute of limitations; exhaustion of administrative  
10 remedies; personal participation of Dzurenda; and qualified immunity. (*See generally*  
11 ECF No. 64).

12 Defense counsel respectfully requests this extension to: 1. become more acquainted  
13 with this Court's original Order denying Defendant's initial motion to dismiss / motion for  
14 summary judgment and discuss the matter with NDOC officials (remotely – due to  
15 pandemic); 2. evaluate the sensitive nature of a religious case regarding Satanism; 3.  
16 explore all possible defenses; and 4. obtain new and additional declarations from NDOC  
17 in support of Defendant's (second) motion for summary judgment.

18 Federal Rule of Civil Procedure 6(b)(1) governs extensions of time and provides as  
19 follows:

20 When an act may or must be done within a specified time, the  
21 court may, for good cause, extend the time: (A) with or without  
22 motion or notice if the court acts, or if a request is made, before  
23 the original time or its extension expires; or (B) on motion made  
24 after the time has expired if the party failed to act because of  
excusable neglect.

25 Defendants' request is timely and will not hinder or prejudice Rodriguez's case, but will  
26 allow for a thorough briefing to narrow or eliminate issues in this case and to address  
27 Judge Du's Order of denial of Defendant's initial motion. (*See generally* ECF No. 64). The  
28 requested forty-five (45) day extension of time should permit Defendant time to  
adequately discuss the matter with NDOC officials, research, draft, obtain new and

1 additional declarations and submit additional dispositive motions in this case. Defendant  
2 asserts that the requested good cause is present especially during a pandemic to warrant  
3 the requested extension of time.

4 For these reasons, Defendant respectfully requests a forty-five (45) day extension of  
5 time from the current deadline to file dispositive motions in this case, with a new  
6 deadline to and including Friday, May 15, 2020.

7 **II. DISCUSSION**

8 **A. Fed. R. Civ. P. 6(b)(1) allows this Court to extend deadlines.**

9 District courts have inherent power to control their dockets. *Hamilton Copper &*  
10 *Steel Corp. v. Primary Steel, Inc.*, 898 F.2d 1428, 1429 (9th Cir. 1990); *Oliva v. Sullivan*,  
11 958 F.2d 272, 273 (9th Cir. 1992). Fed. R. Civ. P. 6(b)(1) governs enlargements of time  
12 and provides as follows:

13 When an act may or must be done within a specified time, the  
14 court may, for good cause, extend the time: (A) with or without  
15 motion or notice if the court acts, or if a request is made, before  
16 the original time or its extension expires; or (B) on motion made  
17 after the time has expired if the party failed to act because of  
excusable neglect.

18 “The proper procedure, when additional time for any purpose is needed, is to  
19 present to the Court a timely request for an extension before the time fixed has expired  
(i.e., a request presented before the time then fixed for the purpose in question has  
20 expired).” *Canup v. Miss. Valley Barge Line Co.*, 31 F.R.D. 282, 283 (D.Pa. 1962). The  
21 *Canup* Court explained that “the practicalities of life” (such as an attorney’s “conflicting  
22 professional engagements” or personal commitments such as vacations, family activities,  
23 illnesses, or death) often necessitate an enlargement of time to comply with a court  
24 deadline. *Id.* Extensions of time “usually are granted upon a showing of good cause, if  
25 timely made.” *Creedon v. Taubman*, 8 F.R.D. 268, 269 (D.Ohio 1947). The good cause  
26 standard considers a party’s diligence in seeking the continuance or extension. *Johnson*  
27 *v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

28 / / /

1           **B.     Good Cause Exists to Enlarge the Time for Defendants to Respond.**

2       Here, Defendants are requesting additional time of forty-five (45) days to respond  
3       in advance of the deadline to do so. Therefore, they must demonstrate good cause for the  
4       requested enlargement. Moreover, good cause exists to enlarge Defendant's time to move  
5       for summary judgment based on the pandemic and the unavailability of NDOC employees  
6       and counsel's limited office time to represent Defendant.

7       Finally, good cause exists due to the sensitivity and complexity of Rodriguez's religious  
8       claims of Satanism and this Court's prior ruling denying Defendant's initial motion to  
9       dismiss / motion for summary judgment. (*See generally* ECF No. 37 – Dzurenda's motion  
10      for summary judgment and ECF No. 64 – Order denying Defendants motion for summary  
11      judgment.)

12      Good cause exists to enlarge Defendants' time to file dispositive motions in this matter  
13     because: (1) the international pandemic and the State of Nevada's restrictions have made  
14     a lot of NDOC employees unavailable; (2) the international pandemic has limited counsel  
15     for Defendant access to Rodriguez's documents and NDOC officials; (3) Rodriguez's claims  
16     include sensitive religious claims; (4) this Court has denied Defendant's initial motion for  
17     summary judgment regarding the defenses of statute of limitations, exhaustion, and  
18     qualified immunity which now need additional legal research and time to appropriately  
19     respond; and (5) counsel needs additional time to explore all possible defenses; obtain  
20     additional updated and new declarations from multiple NDOC personnel; and explore the  
21     new NDOC Director's position in this matter in support of their motion for summary  
22     judgment.

23      Defendant requests this enlargement of time of forty-five (45) days in good faith,  
24     not for the purpose of unnecessary delay, and they do not anticipate any unfair prejudice  
25     to Rodriguez if this motion is granted.

26     ///

27     ///

28     ///

### **III. PROPOSED SCHEDULE FOR REMAINING DEADLINES**

Dispositive motion deadline May 15, 2020

**Joint pretrial order (if no dispositive motions pending)\*** **June 15, 2020\***

\*Or 30 days after the decision of any pending dispositive motions.

#### IV. CONCLUSION

Based on the foregoing, Defendant respectfully requests that this Honorable Court grant their motion and allow them an additional forty-five (45) days, or up to and including Friday, May 15, 2020, to file their motion for summary judgment.

DATED this 30th day of March, 2020.

AARON D. FORD  
Attorney General

By: /s/Harry B. Ward  
HARRY B. WARD, Bar No. 11317  
Deputy Attorney General

## *Attorneys for Defendants*

Date: March 31, 2020.

IT IS SO ORDERED.

  
\_\_\_\_\_  
UNITED STATES MAGISTRATE JUDGE

## CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 30th day of March, 2020, I caused to be deposited for mailing in the U.S. Mail a copy of the foregoing, **MOTION TO EXTEND THE DEADLINE TO FILE MOTIONS FOR SUMMARY JUDGMENT (Second Request)** to the following:

Pedro Rodriguez, #59114  
Ely State Prison  
P.O. Box 1989  
Ely, NV 89301

/s/Perla M. Hernandez  
An employee of the  
Office of the Attorney General